Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Truth-in-Billing Format	)	CC Docket No. 98-170
	)	
Petition for Declaratory Ruling	)	

REPLY COMMENTS

Arthur V. Belendiuk, individually and as a member of the firm of Smithwick & Belendiuk, P.C., replies to the comments on his Petition for Declaratory Ruling (Petition) filed by Verizon, Sprint, CTIA and the Chamber of Commerce of the U.S.A. (Chamber).

The Petition seeks a Commission ruling that the 180-day limit for disputing customer bills in the Verizon Wireless Customer Agreement is unjust and unreasonable under Section 201(b) of the Communications Act. The other major wireless carriers have similar provisions in their non-negotiable customer agreements.[1] When a customer discovers an incorrect charge on the Verizon Wireless bill and contacts a service representative, the customer typically is told that a refund will only be made for up to six months. The 180-day limit also applies should the customer pursue a claim in arbitration or small claims court, the only forums available under the Verizon Wireless Customer Agreement. 180 days is too short a period reasonably to expect a wireless customer to identify erroneous charges on the bill and provide formal notice of dispute to Verizon Wireless.

Section 415 of the Communications Act establishes a two-year statute of

[1] Petition, at p. 3. AT&T's agreement gives a customer 100 days to dispute a bill, while Sprint and T-Mobile limit a customer to 60 days.

limitations for bringing actions at law or filing a complaint with the Commission. Originally a one-year statute, Congress added a second year at the request of the Commission in 1974. Chairman Richard Wiley testified then that telephone bills had become so complex that a single year did not afford customers enough time to protect their interests. Forty-three years later bills have become far more complex and difficult to understand. Customers of wireless service, which did not exist in 1974, are challenged to decipher bills containing a plethora of charges for equipment, voice, text, data, taxes, surcharges, fees, features, insurance and purchases from third party vendors. The Petition asserts that Section 415 and its two-year limitation period is the proper standard for evaluating the reasonableness of the Verizon Wireless contract provision under Section 201(b).

No commenter questions the Commission's authority under Section 201(b) to declare a term, condition or practice of a wireless carrier to be unjust and unreasonable. Nor does any commenter argue that the Commission lacks authority to find that a provision in a wireless customer contract violates Section 201(b). The Commission's authority over wireless carrier practices is clear. [2]

In its comments the Chamber states, "that consumers should be given fair redress mechanisms for disputes arising with companies with whom they do business. Fair treatment encourages trust and growth in commerce." Pointing out that courts have upheld agreements to shorten the period for legal action, the Chamber asks the Commission to refrain from unnecessarily intervening in contracts made between

[2] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, 14 FCC Rcd 7492, 7502 (1999) "CMRS providers…remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act, and our decision here in no way diminishes such obligations as they may relate to the billing practices of CMRS carriers."

companies and their consumers.

Petitioner agrees that unnecessary intervention is counterproductive, but submits that regulatory action is necessary here given the complexity of wireless bills. The short dispute periods that wireless carriers force on their customers unfairly deprives them of full compensation for wrongful charges, unjustly enriching the providers by millions of dollars.

Sprint's comments oppose the Petition, arguing that Section 415 is inapplicable to the dispute provision since wireless carriers do not file tariffs; that the practice is stated clearly in the contract and therefore does not run afoul of the truth-in-billing rules; and that the competitive wireless market will not tolerate an unreasonable requirement by any one carrier.

Sprint, which offers its customers only 60 days in which to dispute a charge, does not address Petitioner's principal claim that 180 days is an unreasonably short period for a customer to identify and dispute incorrect charges on its bill. The Petition referenced Section 415's two-year statute of limitations primarily as a standard for evaluating the reasonableness of the Verizon Wireless practice under Section 201(b). The Petition did not allege that the practice is unclear or deceptive; only that it is unjust and unreasonable. Competitive as the wireless marketplace may be, it has not inhibited all of the major wireless carriers from imposing unreasonable timeframes on customers for disputing charges.

CTIA's comments oppose the Petition on the grounds that Section 415 does not apply to the non-tariffed services of wireless carriers and that courts have upheld contracts that shorten statutory limitations. CTIA defends the Verizon Wireless 180-day

period as reasonable, arguing that the Commission's truth-in-billing rules and the CTIA Consumer Code for Wireless Service afford consumers protections they did not have in 1974 when Congress extended the one-year statute to two years; that wireless carriers are committed to resolving customer disputes and have a good track record for doing so as evidenced by data from the Better Business Bureau; and that wireless competition and the industry trend of eliminating two-year contract requirements and allowing the unlocking of devices makes it easier for customers to switch providers.

CTIA's arguments do not justify the practice. Congress determined in 1974, a time when all telecommunication services were offered to the public under tariff, that consumers needed two years to adequately protect their interests. The curtailment of the dispute period to 180-days or less by the wireless industry is patently unreasonable when measured against the standard of Section 415.

That courts have upheld the contractual shortening of statutory dispute periods in different industries and circumstances is irrelevant. The Communications Act tasks the Commission with ensuring that the practices of common carriers are just and reasonable.[3] Furthermore, the only support CTIA cites is a line of insurance cases which rely on the well-established principle that,

> …in the absence of a controlling statute to the contrary, a provision in a contract may validly limit between the parties, the time for bringing an action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a *reasonable* period. [4] [Emphasis added; footnote omitted]

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[3] 47 U.S.C. § 201(b): "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful…"

[4] *Order of United Commercial Travelers v. Wolfe,* 331 U.S. 586, 608 (1947)

The operative language here, which CTIA omits, "provided that the shorter period itself shall be a reasonable period," demonstrates the circularity of its argument.

CTIA's Section 201(b) arguments also lack currency and are easily rebutted. The claim that consumers are better protected today than in 1974 on account of the truth-in-billing rules and the wireless code holds no water. Nor does its lauding of the wireless industry's work ethic and its commitment to customer satisfaction explain the fact that wireless bills today are more confusing than ever, years after the truth-in-billing rules and CTIA code were implemented.[5] Finally, wireless carriers do not advertise dispute timeframes as an incentive for customers to switch.

Verizon's comments oppose the petition, arguing that Section 415 does not apply to contract terms; that courts have sanctioned contractual timeframes shorter than statutes of limitation; that standard form commercial contracts limiting dispute periods such as that of Verizon Wireless are commonplace and that its adhesive nature is irrelevant; that its Customer Agreement describes the dispute limitation in bold plain English; and that customers affirmatively agree to its terms and can choose another provider if the agreement is not to their liking.

On the one hand, Verizon acknowledges that other wireless carriers have similar provisions in their customer contracts; on the other, it claims that customers are free to go elsewhere. This choice is illusory. Apart from arguing that Section 415 does not apply to

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[5] Consumer and Governmental Affairs Bureau White Paper on Bill Shock, October 13, 2010 "But as mobile devices have become more and more complex, consumers have had to navigate more complex plans, choices, and bills. The complexity and confusion put them at increasing risk for "bill shock," a sudden, unexpected increase in their mobile bill from one month to the next."

contracts, Verizon fails to address Petitioner's claim that Congress' two-year statute of limitations is the standard by which to judge the reasonableness of its 180-day period under Section 201(b).

Verizon defends the reasonableness of its 180-day limitation period in two paragraphs:

> Six months is a commercially reasonable period for customers to review their bills for mobile wireless service and to dispute charges. Contractual provisions like Verizon's give customers ample time to identify and dispute charges, and they create predictability and efficiencies for service providers.
>
> Companies have legitimate business reasons for terms that limit the time to bring a dispute or complaint. They provide predictability to both parties to the agreement. And they offer efficiencies. Service providers may have to retain specific documents to rebut or respond to some customer claims involving factual disputes, including, for example, whether a customer did or did not purchase or use a particular service, or how much usage a customer had during a particular timeframe. An agreement that limits the time to bring these disputes allows service providers to implement commercially reasonable and efficient record-retention policies and avoid costs of retaining documents unnecessarily across an entire customer base.[6]

Verizon's justification for its contract provision under Section 201(b) consists of assertions that six months is "commercially reasonable," giving the customer "ample time to identify and dispute charges." Verizon provides no support whatsoever for this claim, other than by analogy to other industries, which may or may not be regulated in some fashion. The Commission has never found that Section 201(b) requires only that a practice be "commercially reasonable."[7] The Commission employs its own precedent, fact-finding and judgment to determine whether carrier practices satisfy the command of Section 201(b) that they be just and reasonable.

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[6] Comments of Verizon, at 5

[7] See *Cellco Partnership v FCC* 700 F.3rd 534, 548 (2012), affirming the Commission's data roaming order for mobile-Internet providers not treated as common carriers. "And the "commercially reasonable" standard, at least as defined by the Commission, ensures providers more freedom from agency intervention than the "just and reasonable" standard applicable to common carriers."

Verizon's unsupported claim that 180 days is "ample time for customers to identify and dispute charges" is contradicted by the statutory period of two years and by Commission findings on the increasing complexity of wireless bills and customer confusion.[8] Many customers are made aware of widespread billing inaccuracies through media reports, as by the recent Cleveland Plain Dealer series on Verizon Wireless data charges.[9] Upon discovering erroneous charges on their bills and contacting the company, customers learn that they are limited to a six-month refund, which plainly is inadequate in many cases. Only a miniscule percentage of aggrieved customers will go to the trouble of filing a complaint with the Commission in the hope of being made whole.

Verizon also defends the short dispute period as providing "predictability to both parties to the agreement" and as allowing "efficient record-retention policies." It does not explain why "predictability" after 180 days, as opposed to two years is reasonable or necessary, and further why the cutoff affords customers anything beneficial. The unstated implication of Verizon's "predictability" argument is that customers will be motivated to examine their bills sooner and more carefully. It is safe to say however that customers are unaware of the 180-day limitation until they call the company to dispute a charge. Verizon benefits from the "predictability" of the cutoff by saving itself millions of dollars in legitimate refunds.

As for Verizon's defense of the practice for the sake of "efficient record-retention," the company does not describe its record-retention policies or explain how the 180-day limitation has enabled more efficient record-retention. The Verizon Wireless website currently allows customers to access their bills 18 months back and to view data

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[8] n. 5, *infra*

[9] http://www.cleveland.com/business/index.ssf/2016/10/verizon_acknowledges_increase.html

usage 90 days back. Verizon does not assert that its retention of billing data corresponds to these periods, or that its cost of retaining billing data for at least two years is significant. Verizon's data retention argument is dubious and in any case is poor support for a practice that disadvantages its customers.[10]

These reply comments demonstrate the paucity of justification for the non-negotiable 180-day dispute period in the Verizon Wireless Customer Agreement. Petitioner asks the Commission to declare this practice unjust and unreasonable under Section 201(b) of the Communications Act, applying the two-year statute of limitations in Section 415 as the proper standard of reasonableness.

Respectfully Submitted,

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[10] In the Enforcement Bureau investigation of Verizon Wireless' erroneous billing of $1.99 data charges to 15 million customers, Verizon Wireless agreed to refund these charges for a three-year period from November 2007 to October 28, 2010. *In the Matter of Verizon Wireless Data Usage Charges*, Order and Consent Decree, 25 *FCC Rcd* 15105 (2010)